

Staff Summary Report



Council Meeting Date: 02-21-08

Agenda Item Number: _____

SUBJECT: Request approval of a Resolution No. 2008.19 authorizing the Mayor to enter into the Light Rail Transit Operations Master Cooperative Funding Agreement between the City of Tempe and Valley Metro Rail, Inc.

DOCUMENT NAME: 20080221pwjsm01 **TRANSPORTATION PLANNING (1101-01)**
Resolution No. 2008.19

SUPPORTING DOCS: Yes.

COMMENTS:

PREPARED BY: Jyme Sue McLaren, Deputy Public Works Manager – LRT Division (350-8803)

REVIEWED BY: Glenn Kephart, Public Works Manager (350-8205)

LEGAL REVIEW BY: Rosemary Rosales, Assistant City Attorney (350-8698)

FISCAL NOTE: Sufficient funds for future light rail operations and maintenance have been budgeted in FY08/09 in cost center 3921.

RECOMMENDATION: Council authorizes the Mayor to execute the Light Rail Transit Operations Master Cooperative Funding Agreement between the City of Tempe and Valley Metro Rail, Inc.

ADDITIONAL INFO: The Light Rail Transit Operations Master Cooperative Funding Agreement establishes the fiscal policies for the transfer to Valley Metro Rail Inc. of the City of Tempe's share of operating costs for the Central Phoenix East Valley/Light Rail Transportation Project consistent with the Operations and Maintenance agreement.

RESOLUTION NO. 2008.19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN THE LIGHT RAIL TRANSIT OPERATIONS MASTER COOPERATIVE FUNDING AGREEMENT BETWEEN THE CITY OF TEMPE AND VALLEY METRO RAIL, INC.

WHEREAS, Valley Metro Rail (“VMR”), Inc. has designed and is constructing the Central Phoenix/East Valley Light Rail Transit Project (the “Project”) which will be a new light rail system (the “System”) in the Central Phoenix and East Valley area; and,

WHEREAS, Tempe is the owner or controls various property rights and interests in certain streets, public ways, and parcels needed for the System; and,

WHEREAS, the City of Tempe desires to provide to Valley Metro Rail, Inc. the City’s share of the operating costs of the Central Phoenix East Valley/Light Rail Transportation Project consistent with the Operations and Maintenance Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE ARIZONA, as follows:

The Mayor of the City of Tempe is hereby authorized and directed to execute the Light Rail Transit Operations Master Cooperative Funding Agreement between the City of Tempe and Valley Metro Rail, Inc.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

AGREEMENT NO. _____

**LIGHT RAIL TRANSIT OPERATIONS MASTER COOPERATIVE FUNDING
AGREEMENT
BETWEEN THE CITY OF TEMPE
AND
VALLEY METRO RAIL, INC.**

THIS LIGHT RAIL TRANSIT OPERATIONS MASTER COOPERATIVE FUNDING AGREEMENT ("Master Agreement") is made and entered into this _____ day of _____, 2008, by and between the City of Tempe, a municipal corporation duly organized and existing under the laws of the State of Arizona (hereinafter referred to as "COT" or "City") and Valley Metro Rail, Inc., a non-profit corporation, duly organized and existing under the laws of the State of Arizona (hereinafter referred to as "METRO"). COT and METRO are collectively referred to as the "Parties" and individually as "Party."

RECITALS

WHEREAS, METRO was formed by COT and other Member Cities to design, build, operate and maintain the Central Phoenix/East Valley Light Rail Transportation Project ("LRT Project"); and,

WHEREAS, METRO is nearing completion of the construction of the first 20 miles of the LRT Project and is preparing to launch operations of the light rail passenger transit system; and,

WHEREAS, METRO has entered into a LRT Program Agreement to serve as the lead agency for the Regional Public Transportation Authority ("RPTA") and be responsible for the design, construction, operation and maintenance of additional light rail segments approved in the Regional Transportation Plan under Proposition 400 such that the original LRT Project will increase in size and scope over time; and,

WHEREAS, COT desires to provide to METRO the City's share of the operating costs of the LRT Project consistent with the Operations and

Maintenance Agreement ("O&M Agreement") (as may be amended from time to time) and as approved by the City; and,

WHEREAS, in addition to the O & M Agreement, Metro and Member Cities, including COT, agree to participate in sharing the costs of safety, security and fare enforcement and,

WHEREAS, the purpose of this Master Agreement is to establish the fiscal policies for the transfer of COT's share of costs from COT to METRO for operation of the LRT Project;

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations herein contained, it is agreed by the Parties as follows:

SECTION 1. DEFINITIONS

The following capitalized terms shall have the following meaning when used in this Master Agreement, unless a different meaning is clearly intended:

"COT" or "City" means the City of Tempe, a municipal corporation duly organized and existing under the laws of the State of Arizona.

"Effective Date" means the date on which the rights granted hereunder become operative, as specified in Section 7 hereof.

"Rail Transit Operations" means those base and special services provided to the public by METRO as more fully set forth in "Exhibit C" and additional rail operations services as further set forth in Section 2.I. *infra*, the costs of which will be funded in part by COT in accordance with this Master Agreement and in part by Member Cities who have entered into funding agreements with METRO.

SECTION 2. METRO'S OBLIGATIONS

A. METRO shall serve as fiscal agent for Rail Transit Operations ("Operations") which requires that there be proper accounting, internal control, disbursement and financial reporting of any and all monies received and disbursed by METRO on behalf of the Member Cities providing financial support for Operations.

B. METRO shall arrange for and provide to COT an audit of the fare revenue distribution for each fiscal year to be performed by an independent certified statistician qualified to meet FTA standards for passenger revenue reporting. The audit shall be completed and delivered to COT within 180 days of the end of the fiscal year.

C. Funding between COT and METRO shall be the subject of an annual Operations Funding Agreement ("OFA") which shall set forth therein the funds committed by COT and the responsibilities of METRO with respect to those funds. The OFA shall be in a form attached as "Exhibit A" and shall be incorporated into this Master Agreement.

D. METRO shall abide by the O&M Agreement attached as "Exhibit B", and incorporated into this Master Agreement.

E. On or before October 31, 2008, METRO shall prepare and submit to COT a preliminary budget for pre-revenue Startup and Testing Activities, funded outside this Agreement as part of the CP/EV Full Funding Grant Agreement, as well as for rail passenger revenue operations for the period July 1, 2009 through June 30, 2010 (Fiscal Year 2010, or FY'10). Thereafter, on October 31 of each year, METRO shall submit to COT a preliminary annual Operations budget for FY '11 and succeeding fiscal years.

F. On or before March 31, 2008, METRO shall prepare and submit to COT a proposed budget for pre-revenue Startup and Testing Activities, funded outside this Agreement as part of the CP/EV Full Funding Grant Agreement, as well as for rail passenger revenue operations for the period July 1, 2008 through June 30, 2009 (Fiscal Year 2009, or FY'09). Thereafter, on March 31 of each year, METRO shall submit to COT the Annual Rail Transit Operations Budget, as set forth in Section 4.B. *infra*, and proposed annual OFA for FY '10 and succeeding fiscal years. METRO shall allow a reasonable time to the Council for the City to review and approve or approve in part the Annual Rail Transit Operations Budget prior to completing the annual OFA. As part of the Annual Rail Transit Operations Budget, METRO shall budget a contingency of no more than 3% of its total operations and maintenance budget. This contingency shall only be used by unanimous consent to the Rail Management Committee and by majority consent of the METRO board.

G. On or before February 15 and August 15 of each year, METRO shall prepare and present COT with a mid-year operations and financial update ("Mid-year Operations Update") for the previous six months and previous twelve months, respectively.

H. On or before January 31 of each year, METRO shall prepare and present COT with a Year-end Operations and Financial Report ("Year-end Operations and Financial Report") which shall include a cost detail of the previous fiscal year's Rail Transit Operations and expressly set forth the share of those costs that each Member City funded.

I. METRO will provide base and special Rail Transit Operations, (refer to "Exhibit C") to COT together with the following additional rail operations services, which are fully outlined in the O&M Agreement:

1. Rail System Maintenance

- LRV, Track, Traction Power, Signals & Communications

- Fare Collection Equipment
- OMC, Stations
- Operations Control Center

2. Rail System Operators

- Operator labor costs and fringe benefits
- Management and oversight

3. Safety, Security & Fare Enforcement

- Fare Inspectors
- Train and platform safety and security

4. Rail System Administration

- Community Relations
- Insurance (OCIP) and Risk Management
- Legal
- Procurement and Purchasing
- Financial Services
 - a. Fare collections
 - b. Accounting and reporting

SECTION 3. COT'S OBLIGATIONS

A. COT shall consider approving or approving in part in a timely manner the Annual Rail Transit Operations Budget, which includes COT's and Member Cities' funding obligation for operation of the LRT Project for each fiscal year as set forth in the O&M Plan and Service Plan, as amended. Further, COT shall consider approving or approving in part and, if and to the extent approved, execute in a timely manner, the OFA for FY '09 and each subsequent fiscal year. COT reserves the right to object to, as provided in this Agreement, any cost that the COT deems to be unreasonable. If the COT deems safety, security and fare enforcement costs to be unreasonable, COT shall provide safety, security and fare enforcement for that portion of the light rail line within COT's boundaries, and METRO shall release COT from the obligation for these costs contained in the associated Annual Rail Transit Operations Budget.

B. COT shall, in a timely manner, consider the Mid-year Operations Update submitted to COT by METRO. If the Mid-year Operations Update requires COT to make additional contributions to METRO for Rail Transit Operations of the LRT Project, COT shall make such contribution within 30 calendar days of receipt of the Mid-year Operations Update.

C. COT shall, in a timely manner, consider the Year-end Operations and Financial Report submitted to COT by METRO and note all variances.

D. COT shall include its funding obligation for Rail Transit Operations in its annual budget process and release said funds to METRO as set forth in this Agreement.

E. The Parties shall create a financial working group which shall be comprised of representatives of each Party and Member Cities who will coordinate their respective financial responsibilities and provide ongoing oversight of all financial and reporting requirements. The working group shall meet on a regular basis.

SECTION 4. FINANCIAL DISCLOSURES

A. Segregation of Funds

METRO shall open and maintain separate depository accounts for each of the following:

1. Rail Transit Operations

- METRO shall deposit the proportionate share of funds for Rail Transit Operations from COT and Member Cities into a single account from which expenditures limited to Rail Transit Operations will be drawn.

2. Rail Transit Operations Fare Revenues

- METRO shall collect and deposit all Fare Revenues from Rail Transit Operations into a single account from which only distributions to Member Cities for their proportionate share of the Fare Revenue shall be disbursed.

B. Annual Financial Planning

For each fiscal year (July 1- June 30), METRO shall prepare the Annual Rail Transit Operations Budget and outline each Member Cities' share to include the following:

1. Full Cost – Base service operations
2. Capital equipment replacement costs/ Reserve
3. Safety and Security costs
4. Fare revenue forecast

C. Monthly Reporting of Actual Costs versus Budget

For each fiscal month, METRO shall prepare the Monthly Rail Transit Operations Financial Report to include the following:

1. Costs and revenues for current month and year-to-date
2. Analysis of significant variances to plan

D. Mid-Year Operations Update

No later than August 15 and February 15 of each year, METRO shall prepare the Mid-year Operations Update and outline each Member Cities' share to include the following:

1. Costs and revenues for the preceding 6-month fiscal period and year-to-date
2. Analysis of significant variances to plan
3. Amounts contributed by Member City and any amount due for cash flow adjustment for the preceding 6-month fiscal period

E. Year-End Operations

On or before January 31 of each year, METRO shall prepare and present COT with a Year-End Comprehensive Annual Financial Report. Included in this report shall be a summary of year-end operations which will reflect the previous fiscal year's Rail Transit Operations and detail each Member Cities' share of those costs.

F. Financial Reporting Requirements

No later than January 31 of each year, METRO shall submit the CAFR which shall be audited by an independent accounting firm and which will:

1. Certify the annual Rail Transit Operations costs and revenues (including Member City contributions and disbursements)

2. Certify that reported annual Rail Transit Operations costs related to security and fare enforcement are supported by sufficient documentation to provide reasonable assurance that they accurately reflect actual costs for rail transit security services.
3. Provide the basis for any year-end cash flow adjustment

SECTION 5. RAIL TRANSIT OPERATIONS COST SHARING

A. Rail Transit Operations Cost Sharing

1. "Base Costs" for Rail Transit Operations are defined as those costs necessary to deliver passenger services as defined in "Exhibit C"
Total Base Service includes:
 - Schedule A – Rail Transit Scheduled "Base" Service
 - Schedule B - Rail Transit Scheduled Additional Service (to accommodate planned municipal events)
2. Each Member City will provide funding for its proportionate share of the Total Base Service Rail Transit Operations to be determined by the Design & Construction mileage ratio for rail miles that are currently delivering passenger service. A recalculation of the mileage ratio for rail miles will be developed with the introduction of any extension of light rail operations.

B. Rail Transit Operations Cost Cash Flow

1. Base Service Funding:
 - a. The COT and each Member City with rail miles currently delivering rail service will advance to METRO its proportionate share to fund monthly Base Service costs.
 - b. The monthly Basic Service Cost contribution will be delivered to METRO two (2) days prior to the start of each fiscal month for which Rail Transit Operations services are to be provided.
2. Rail Transit Operations Disbursements:
METRO will disburse all costs related to Rail Service and Rail Operations and Maintenance.

C. Actual Cost – Funding Adjustments

1. For each fiscal 6-month period, METRO shall review actual Rail Transit Operations expenditures and contributions and submit a Mid-year Operations Update to COT.
2. METRO shall request payment of COT's proportionate share of funds that might be necessary to adjust payments to the agreed upon funding shares as set forth in this Agreement.
3. Funding adjustments shall be made as set forth in this Agreement for the following:
 - a. July to December fiscal period
 - b. January to June fiscal period
 - c. CAFR – Final operations annual cost adjustment

Funding adjustment requests shall be documented by invoice or credit memo and cash settlement of the adjustment shall be made within thirty (30) days of issuance.

SECTION 6. RAIL TRANSIT OPERATIONS FARE REVENUE SHARING

BACKGROUND

The establishment of a Regional Fare Policy is a collaborative effort among RPTA, METRO and the Member Cities. Any proposed change to rail fare revenue will be brought before the METRO Rail Management Committee and the METRO Board of Directors for approval. Upon approval, these changes shall be incorporated into the Regional Fare Policy.

METRO will arrange for the collection of Rail fares and shall distribute to each Member City its proportionate share of the Fare Revenues.

Fares will be allocated based upon Fare Revenues collected ("Fares") and passenger rides ("Rides") delivered. Fares will be categorized by mode (bus or rail), fare type (base fare, day-pass, two-day pass, monthly-pass, discounted fares, etc.) and location of fare collection. Passenger Rides will be tracked by boarding counts by mode and location. Bus boardings will be recorded by farebox tabulation. Rail boardings will be tabulated by LRV Automatic Passenger Count equipment which will be supplemented by passenger count sample audits to be performed in accordance with FTA standards. As part of the rail fare inspection program provided by VMR, Rail Fare Inspectors will audit fare compliance and record fare type paid for statistical compilation. No additional fees will be charged to COT or the Member Cities for this service.

METRO shall arrange for and provide to Member Cities an audit of the fare revenue distribution for each fiscal year to be performed by an independent certified statistician qualified to meet FTA standards for passenger revenue reporting. The audit shall be completed and delivered to Member Cities within 180 days of the end of the fiscal year.

A. System-wide fares shall be allocated as follows:

1. On a monthly basis the sum of rail, bus and regional fares shall comprise the Total System-wide Fare revenues.
 - a. Rail-generated fares collected by Ticket Vending Machine ("TVM") cash and credit/debit cards shall be recorded and reconciled against cash deposits.
 - b. Bus-generated fares collected by farebox shall be recorded and reconciled against cash deposits.
 - c. Regional fares collected by sales of monthly passes and other fare types shall be recorded and reconciled against cash deposits.
2. On a monthly basis the Total System-wide Fare revenues shall be allocated proportionately to bus and rail as determined by the ratio of passenger boardings recorded for each mode.
 - a. Full-fare boardings and revenues shall be tabulated and allocated to bus and rail per sales transactions and as confirmed by fare inspection sampling.
 - b. Discounted-fare boardings and revenues shall be tabulated and allocated to bus and rail per sales transactions and as confirmed by fare inspection sampling.
 - c. Pass fare boardings and revenues shall be tabulated and allocated to Bus and Rail per sales transactions and as confirmed by fare inspection sampling.

The result of the allocation process is a total monthly Rail Fare Revenue and a total monthly Bus Fare Revenue, which together equal the Total System-wide Fare Revenue.

3. The monthly Rail Fare Revenue shall be divided between Member Cities based upon the ratio of passenger boardings recorded within each jurisdiction during that month.
 - a. Full-fare boardings and revenues shall be tabulated and allocated to Member Cities per rides counted, sales transactions processed and fare inspections reported.

- b. Discounted fare revenues shall be tabulated and allocated to Member Cities per rides counted, sales transactions processed and fare inspections reported.
- c. Monthly Pass fare revenues shall be tabulated and allocated to Member Cities per rides counted, sales transactions processed and fare inspections reported.

The total Rail Fare Revenues collected for the month shall be summarized, certified to be complete and ready for distribution.

METRO shall distribute to COT its proportionate share of the monthly Rail Fare Revenues within thirty (30) days of the end of each fiscal month.

SECTION 7. EFFECTIVE DATE; TERM OF AGREEMENT

The Effective Date is the date this Master Agreement is signed and filed with the COT City Clerk.

This Master Agreement shall be effective for an indefinite term. The Parties do not intend that the term of this Master Agreement shall exceed any limitation imposed by law, including without limitation the laws of the State of Arizona, and agree to comply with any applicable requirements of such laws in connection with any renewal of the term of this Master Agreement.

SECTION 8. TERMINATION

This Master Agreement may be terminated at the option of COT upon sixty (60) days prior written notice delivered to METRO if METRO is in default in the performance of any material covenant, term or condition contained in this Master Agreement and fails to cure its default in accordance with the terms and conditions set forth in Section 12.

SECTION 9. AGREEMENT NON-ASSIGNABLE

METRO may not assign or otherwise transfer any of its rights or obligations hereunder to a third party without the express prior written consent of COT, which may be granted or withheld by COT in its sole and absolute

discretion. Any assignment or transfer without such prior written consent shall be void.

SECTION 10. INDEMNIFICATION

Except for claims arising solely and exclusively from the negligent or willful acts or omissions of COT, its officers, officials, agents or employees (hereinafter referred to as "Indemnatee"), METRO shall indemnify, defend, save and hold the Indemnatee harmless from and against any and all claims, actions, liabilities, damages, losses, expenses and costs (including court costs, attorneys' fees and costs of claim processing, primary loss investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), loss or damage to tangible property and economic or financial loss of any character or any nature: (1) arising under this Master Agreement, or (2) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of METRO or any of its owners, officers, directors, agents, contractor or employees, including employees from the City assigned to work full time for METRO and including the employees of COP assigned to work on safety and security.

It is the specific intent of the Parties that the Indemnatee shall, in all instances, except for loss or damage resulting from the sole and exclusive negligence of the Indemnatee, be indemnified against all liability, loss or damage of any nature whatever for or on account of any injuries to or death of person or damages to or destruction of property belonging to any person, or economic or financial losses arising out of or in any way connected with the performance of this Master Agreement.

It is agreed that METRO will be responsible for primary loss investigation, defense and judgment costs.

SECTION 11. INSURANCE

METRO will procure and maintain the minimum insurance coverage described in "Exhibit D"-Insurance.

METRO will provide COT with a copy of all policies, endorsements and certifications upon request.

SECTION 12. DEFAULT

Either Party shall be deemed in default under this Master Agreement upon failure of such Party to observe or perform any material covenant, condition or agreement on its part to be observed or performed hereunder, and the continuance of such failure for a period of thirty (30) days after written notice by the other Party, as required herein. Such notice shall specify the failure and request it be remedied, unless the Party giving notice agrees in writing to an extension of the time period prior to its expiration. However, if the failure stated in the notice cannot be corrected within the applicable period, it will not give rise to a default hereunder if corrective action is instituted within the applicable period and diligently pursued until the failure is corrected. In the event of a default hereunder, the non-defaulting Party may have a breach of contract claim and remedy against the other in addition to any remedy provided or permitted by law, provided, however, that no remedy that would have the affect of amending any provisions of this Master Agreement shall become effective without the formal amendment of this Master Agreement, except to the extent the COT terminates this Master Agreement as set forth in Section 8 herein.

SECTION 13. DISPUTE RESOLUTION

Any dispute arising out of this Master Agreement, which is not resolved at staff level, shall be referred to METRO's Chief Executive Officer and a representative designated by COT's City Manager. If, after good faith

negotiations aimed at reaching an amicable solution, a dispute cannot be resolved, the dispute shall be presented to the METRO Board of Directors for resolution. If not resolved at this level to the satisfaction of COT, the dispute may be brought before the appropriate state court in Maricopa County, Arizona or subject to formal, non-binding arbitration.

SECTION 14. AUDIT

All books, accounts, reports, files and other records under the custody or control of METRO relating to each fiscal year of operations and such books, accounts, reports, files and other records under the custody or control of COP for the safety, security and fare enforcement services, shall be subjected, at all reasonable times, to inspection and audit by COT for five (5) years after the submission of each fiscal year's Year-End Operations and Financial Report. Such records shall be produced at METRO offices as and when requested by COT.

SECTION 15. NOTICE

Any notice, consent or other communication ("Notice") required or permitted under this Master Agreement shall be in writing and either hand-delivered, sent by facsimile transmission, by United States mail properly addressed postage prepaid registered or certified mail, with return receipt requested, or by commercial air courier or express service at the principle office of the Party :

If intended for METRO:

Valley Metro Rail, Inc.
101 N. First Avenue, Suite 1300
Phoenix, AZ 85003
Attention: General Counsel
Fax: (602) 271-9361
Attention: Director of Finance and Administration
Fax: (602) 271-9361

If intended for COT:

City of Tempe, Arizona
Office of the City Manager
31 East 5th Street
Tempe, AZ 85281
Attention: City Manager
Fax: (480) 858-2070

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service, if mailed, ten (10) days after the notice is deposited in the United States mail as provided. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either Party may change its mailing address, FAX number or the person to receive notice by notifying the other Party as provided in this Section.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. The requirement for duplicate notice is not intended to change the effective date of the Notice sent by facsimile transmission.

SECTION 16. AMENDMENT

This Master Agreement may be modified or amended only by a written document executed by both METRO and COT, and approved as to form by COT's City Attorney. Such document shall expressly state that it is intended by the Parties to amend specifically identified terms and conditions of this Master Agreement.

SECTION 17. APPLICABLE LAW AND LITIGATION

This Master Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Any and all litigation arising from this Master Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.

SECTION 18. NON-WAIVER

No covenant or condition of this Master Agreement may be waived by any Party, unless done so in writing. Forbearance or indulgence by any Party in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by the other.

SECTION 19. SEVERABILITY

Any provision of this Master Agreement that is prohibited or unenforceable under the laws of the State of Arizona shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

SECTION 20. BENEFIT AND BINDING EFFECT

The terms and provisions of this Master Agreement shall inure to the benefit of and are binding on METRO and COT and their respective successors and permitted assigns.

SECTION 21. SURVIVAL

The indemnifications and limitations on liability provided in this Master Agreement shall have full force and effect notwithstanding any other provision of

this Master Agreement and shall survive any termination or expiration thereof.

SECTION 22. FURTHER ASSURANCES

The Parties hereto shall execute such other documents and take such other actions as may be reasonably necessary or proper to achieve the intent and purposes hereof.

SECTION 23. CONFLICTS OF INTEREST

All Parties hereto acknowledge that this Master Agreement is subject to cancellation by COT pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

SECTION 24. INTEGRATION CLAUSE

This Master Agreement, together with the exhibits, instruments and other documents required to be executed and delivered in connection herewith supersedes all prior negotiations and agreements.

SECTION 25. CONSTRUCTION AND INTERPRETATION OF AGREEMENT

This Master Agreement, and each of its provisions, exhibits, terms and conditions, has been reached through negotiations between the Parties. Accordingly, each Party expressly acknowledges and agrees that this Master Agreement shall not be deemed to have been authored, prepared or drafted by any particular Party, and that the rule of construction that resolves ambiguities against the drafting party shall not be employed in the interpretation of this Master Agreement.

SECTION 26. THIRD-PARTY BENEFICIARIES

This Master Agreement is intended to benefit the corporate and municipal interests of METRO and COT alone, and no other person shall claim any implied right, benefit or interest in such services. The Parties intend not to create rights in or remedies to any third party as a beneficiary of this Master Agreement or of any duty, covenant, obligation or undertaking established under this Master Agreement.

SECTION 27. POLICE POWER

The Parties acknowledge the right vested in COT pursuant to general law to exercise its police power for the protection of the health, safety and welfare of its constituents and their properties. Nothing in this Master Agreement shall be construed as precluding COT from exercising such powers in connection with the subject matter hereof.

SECTION 28. AFFIRMATIVE ACTION EMPLOYMENT

METRO shall comply with the provisions of this Master Agreement, and with the requirements of Chapter 18, Articles 4 and 5, Code of the City of Phoenix, 1969, as amended, pertaining to discrimination on the acceptance of the applications and in the hiring and treatment of employees.

In this context, the following language is required to appear:

METRO shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin or age or disability, nor otherwise commit an unfair employment practice. METRO will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment without regard to their race, color, religion, gender or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, demotion or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection fro training, including apprenticeship. METRO further agrees that this clause will be incorporated into all subcontracts entered into with suppliers of materials or services, and all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. This clause shall also be incorporated in all job-consultant agreements or subleases in any way pertaining to METRO's performance under this Agreement.

METRO's attention is directed to the requirements and provisions of the City of Phoenix Ordinance G-3472 (same being Sect. 18-19, et seq., Code of the City of Phoenix, adopted November 20, 1991).

SECTION 29. INCORPORATION OF EXHIBITS

This Agreement in its entirety includes Exhibits A through D, all of which are, by this reference, incorporated herein and made part hereof as though fully set forth. The Exhibits of this Agreement are as follows:

EXHIBIT A -	Form of Operations Funding Agreement
EXHIBIT B-	Operations and Maintenance Agreement
EXHIBIT C-	Rail Service Operations
EXHIBIT D-	Insurance

WHEREFORE, the Parties have each executed this Master Agreement as of the date first set forth above.

VALLEY METRO RAIL, INC. (METRO)

By: _____
Richard J. Simonetta
Chief Executive Officer

APPROVED AS TO FORM

By: _____
Michael J. Ladino
General Counsel for Valley Metro Rail, Inc.

CITY OF TEMPE

By: _____
Hugh Hallman, Mayor

APPROVED AS TO FORM

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

EXHIBIT A
OPERATIONS FUNDING AGREEMENT
NUMBER _____

This Operations Funding Agreement Number ____ is between the City of Tempe ("COT" or "City"), a local government unit and political subdivision of the State of Arizona, and Valley Metro Rail, Inc. ("METRO"), a non-profit corporation existing in the State of Arizona.

WHEREAS, COT and METRO entered into a Light Rail Transit Operations Master Cooperative Funding Agreement ("Master Agreement"), effective _____, and

WHEREAS, COT and METRO agreed in the Master Agreement that the COT's proportionate share of periodic operations funding obligations would be set forth in this OFA,
and

WHEREAS, Council for the City has approved or approved in part the City's proportionate share of annual costs as set forth in the Annual Rail Transit Operations Budget of the fiscal year 20XX,

NOW, THEREFORE IT IS AGREED:

I. Scope of Agreement. COT operations funding of \$____.00 to METRO in partial payment for operations costs of the Project for the period commencing _____ and ending _____.

II. Funding. COT will transfer \$____.00 in a manner to be determined by COT and METRO staff.

III. Integration. This Operations Funding Agreement is subject to the terms and definitions of the Master Agreement unless expressly agreed otherwise.

EXHIBIT B
OPERATIONS AND MAINTENANCE AGREEMENT

EXHIBIT C –
RAIL SERVICE

Schedule A – **Rail Transit Scheduled “Base” Service**

Time of Day	Headway
Weekday 4:00 am to 6:00 am	20 minutes
Weekday 6:00 am to 7:00 pm	10 minutes
Weekday 7:00 pm to 1:00 am	20 minutes
Weekend 4:00 am to 7:00 am	30 minutes
Weekend 7:00 am to 7:00 pm	15 minutes
Weekend 7:00 pm to 10:00 pm	20 minutes
Weekend 10:00 pm to 1:00 am	30 minutes

- Service to be coordinated with Bus service schedules

Schedule B -- Rail Transit Scheduled Additional Service (to accommodate planned municipal events):

	Attendance	Weekday	Weekend		Projected LRT Mode Share	LRT Arrivals Before Event	Bulk Discharge After Event	LRT Boardings After Event	Car Equivalents After Event (PLS-d Car Loadings)		Car Miles/Year (22.5 Miles/Car/Event)
Phoenix Activities											
Phoenix Suns	19,023	32	14	46	10%	1,902	Yes	1,902	11 cars		11,385
Phoenix Mercury	13,703	11	4	15	10%	1,370	Yes	1,370	8 cars		2,700
Arizona Rattlers	15,980	2	6	8	10%	1,598	Yes	1,598	10 cars		1,800
Ice Shows	11,000	3	3	6	8%	880	Yes	880	5 cars		675
Major Concerts	11,000	4	6	10	8%	880	Yes	880	5 cars		1,125
Convention Center											
Weekday Average	680	261		261	15%	102	No	26	None		
Weekend Average	1,100		52	52	15%	165	No	41	None		
Miscellaneous (Circus, etc.)											
Weekday Average	600	261		261	15%	90	Yes	90	1 cars		5,873
Weekend Average	4,000		52	52	15%	600	Yes	600	4 cars		4,680
Arizona Diamondbacks	30,000	55	26	81	10%	3,000	Yes	3,000	17 cars		30,983
Tempe Activities											
AMA Supercross	70,000	1		1	10%	7,000	Yes	7,000	41 cars		923
Epicurean Festival	60,000		1	1	10%	6,000	Yes	6,000	35 cars		788
Spring Festival of the Arts	10,000		2	2	10%	1,000	No	250	2 cars		90
Spring Football	60,000		1	1	12%	10,000	No	2,500	15 cars		338
Concerts	60,000		2	2	10%	6,000	Yes	6,000	35 cars		1,575
Downtown Cooldown	60,000		1	1	8%	4,800	Yes	4,800	28 cars		630
Sun Devils Football	60,000	1	5	6	8%	4,800	Yes	4,800	28 cars		3,780
Sun Devils Basketball	11,500	7	8	15	10%	1,150	Yes	1,150	7 cars		2,363
Band Day	66,014		2	2	10%	6,600	Yes	6,600	39 cars		1,755
Fantasy of Lights	70,000	1		1	8%	5,600	Yes	5,600	33 cars		743
Fall Festival of the Arts	70,000	2	2	4	12%	8,400	No	8,400	15 cars		1,350
Block Party	125,000	1	2	3	12%	15,000	No	250	4 cars		270
Totals	829,600			0							73,823
Pre-Special Event Non-Scheduled Trains (50% Of Post Event Train Requirements).											36,911
Total Event Miles/Year											110,734
Source: Phoenix Downtown Partnership & Tempe DTC											

EXHIBIT D INSURANCE